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Breaking Singapore's Regrettable Tradition of Chilling Free Speech with Defamation Laws

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I. INTRODUCTION

Overshadowed by Singapore's economic success is the established practice of the country's public officials aggressively and successfully pursuing defamation suits against political opponents as a means of stifling political dissent.[1] This practice, which dates back to 1979,[2] has not gone unnoticed by the international community. Amnesty International (Amnesty) has expressed its disdain for the way in which these defamation suits stifle free speech. Amnesty stated that "this pattern of defamation suits has been both unnecessary and disproportionate and that, by undermining the requisite balance between the right to protection of reputation and the right to free speech, has amounted to a violation of the fundamental right to freely hold and peacefully express one's opinions."[3] Moreover, both the New York-based Lawyers Committee for Human Rights and the Vancouver-based Lawyers Rights Watch Canada have also expressed their concern, saying that "[t]he right to express oneself freely in public without fear of reprisal has been severely compromised in Singapore."[4]

Ironically, the fundamental right to free speech is expressly guaranteed in Article 14 of the Singapore Constitution.[5] This right is not absolute, however, as the Constitution also permits

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1. Singapore courts have consistently granted judgments in favor of public officials. *See* Lee Kuan Yew v. Tang Liang Hong, [1997] 3 S.L.R. 91, 113-14 (Sing.) (describing past decisions on defamation cases involving public officials).

2. *E.g.*, Lee Kuan Yew v. Jeyaretnam, [1979] 1 M.L.J. 281 (Sing.).

3. Amnesty International, *Singapore: Defamation Suits Threaten Chee Soon Juan and Erode Freedom of Expression* (Nov. 2, 2001), *at* http://web.amnesty.org/library/eng-sgp/index.

4. *Singapore's High Court Denies Trial to Opposition Leader in Defamation Case*, THE CAN. PRESS, Apr. 4, 2003, 2003 WL 18252432.

5. SING. CONST. art. 14, § 1(a).

Parliament to impose restrictions on this right.[6] These restrictions are laid out in Singapore's Defamation Act,[7] which provides the basis upon which defamation suits are brought into court.

This Comment argues that the series of defamation suits brought by public officials constitutes a misuse of defamation laws and an abuse of Singapore's judicial process to the point of chilling free speech. To cure this injustice, this Comment proposes that Singapore courts should adopt the public official exception, an alternative standard drawn from other common law jurisdictions, namely that of the United States, Britain, and Australia.

Part II provides background information on Article 14 of the Singapore Constitution and the Defamation Act. Part II also presents the pattern of defamation suits brought by public officials against political opponents and foreign publications.

Part III argues that in order for the judiciary to uphold the integrity of Singapore's judicial process, it needs to strike a balance between two competing interests: the right to protect a public official's reputation and the right to free speech. The judiciary, as Part III explains, is the most appropriate branch of power to correct this abuse of the judicial process, because it has the authority under Singapore's Constitution to exercise judicial review and safeguard the right of free speech from infringement by members of the executive branch. The judiciary currently applies a strict liability standard to defamation cases involving public officials; this standard, however, as applied in three cases presented in Part III, unfairly tips the balance in favor of protecting public reputation. Hence, the judiciary needs to reevaluate this strict liability standard.

Part III also proposes that the judiciary should apply the public official exception and shift the burden of proof from the defendant to the plaintiff to avoid chilling free speech with defamation laws. There is an emerging trend in common law jurisdictions of adopting the free speech principles underlying the public official exception. Moreover, there is a hint of greater tolerance for political dissent in Singapore, which means that when the judiciary considers the country's local conditions, it can adopt the public official exception without having to look beyond the four corners of Singapore's Constitution.

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6. *Id.* § 2(a).
7. Defamation Act, 1985, c. 75 (Sing.).

Finally, Part IV concludes that by adopting the public official exception the judiciary will not only ensure that the right to free speech is adequately protected in this city-state, but it will also set a good example for the rest of Asia.

II. BACKGROUND

Singapore's Constitution not only expressly guarantees the fundamental right to free speech,[8] but it also embodies the principle of separation of powers.[9] The Constitution empowers Singapore courts to exercise judicial review and to serve as a check on the other branches of the government against constitutional infringements on the right to free speech.[10] Thus, the courts have the duty to prevent members of the executive branch from misusing defamation laws to muzzle political opponents.

A. Singapore's Constitution and Defamation Act

Founded in 1819 as a British colony, Singapore is a Commonwealth republic with its legal system based on the English common law.[11] Singapore's Constitution was established in 1959 and amended in 1965, when Singapore declared independence.[12]

Section (1)(a) of Article 14 of Singapore's Constitution expressly guarantees that "every citizen of Singapore has the right to freedom of speech and expression."[13] This right is not absolute, however, since section (2) provides that "Parliament may by law impose (a) . . . restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof . . . designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offence. . . ."[14]

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8. SING. CONST. art. 14, § 1(a).

9. *E.g.*, Cheong Seok Leng v. Public Prosecutor, [1988] 2 M.L.J. 481, 487 (Sing.); Attorney Gen. v. Lingle, [1995] 1 S.L.R. 696, 709 (Sing.); Teo Soh Lung v. Minister for Home Affairs, [1989] S.L.R. 499, 1989 SLR LEXIS 310, at *53 (Sing.).

10. Thio Li-Ann, *Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs*, 2002 SING. J. LEGAL STUD. 328, 341 (2002) [hereinafter Thio Li-Ann I].

11. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 2002: SINGAPORE, 461 (2002), *available at* http://www.cia.gov/cia/publications/factbook/index.html (last updated Apr. 29, 2004) [hereinafter CIA].

12. *See id.*

13. SING. CONST. art. 14.

14. *Id.* § 2(a).

An example of one such restriction on the right to free speech is Singapore's Defamation Act (Ch. 75). This Act gives rise to the right to bring a defamation cause of action. Of particular relevance is Article 14, entitled "Limitation of Privilege at Elections," which provides: "A defamatory statement published by or on behalf of a candidate in any election to the office of . . . Parliament . . . shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election . . . ."[15] This precludes the defense of qualified privilege, which protects certain communications made in the interest of society. Only Article 12 provides a qualified privilege, which is solely extended to newspapers.[16]

In relation to Article 14, it is worth noting that Singapore's unicameral Parliament is comprised of eighty-four seats,[17] of which only three are constitutionally required to be held by opposition parties.[18] The People's Action Party (PAP) has been the ruling majority since the country achieved independence in 1965.[19] The leader of PAP, Lee Kuan Yew, served as Singapore's first Prime Minister from 1959 to 1990, after which he became Senior Minister, and PAP Secretary-General Goh Chok Tong became the nation's second and current Prime Minister.[20]

B. The Pattern of Defamation Suits Brought by Public Officials Against Political Opponents and Foreign Publications

According to Australian barrister Stuart Littlemore, who once monitored Singapore's libel cases for the International Commission of Jurists, the members of PAP have never lost a single defamation suit.[21] His calculations also indicate that members of the PAP received twelve times the average amount of

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15. Defamation Act, 1985, c. 75, § 14.

16. *Id.* § 12.

17. CIA, *supra* note 11, at 461.

18. Janet Matthews Information Services, Hilfe Country Report, *Singapore: Politics*, May 3, 2000, LEXIS, Nexis Library, News File.

19. Eugene K. Tan, *Law and Values in Governance: The Singapore Way*, 30 H.K.L.J. 91, 93 (2000); *see also* BBC News, *Chee Charged Again Over Unlicensed Speech*, *at* http://news.bbc.co.uk/1/hi/world/asia-pacific/251794.stm (Jan. 9, 1999).

20. The Cabinet, Lee Kuan Yew, *at* http://www.cabinet.gov.sg/p_smlee.htm (last visited Apr. 29, 2004); CIA, *supra* note 11, at 461.

21. Eric Ellis, *Singapore Authorities Use Libel Laws to Silence Critics*, THE AUSTRALIAN, Sept. 26, 2002, at B09.

damages usually awarded.[22] The amount of damages awarded in the following cases not only confirms Littlemore's assertions, but also indicates the normative value that Singapore courts attach to the reputation of public officials.

In 1979, J.B. Jeyaretnam of the Workers' Party was held liable for slander against Lee when, at an election rally, he accused Lee of abusing his office as Prime Minister by procuring preferential treatment for his brother and wife to their personal financial advantage.[23] Finding that the slander was made for political gain, the court awarded Lee S$130,000.[24]

Similarly, in 1989, Seow Khee Leng of the Singapore United Front Party was held liable for slander against Lee for stating at a 1984 election rally that Lee was guilty of corruption because of his criminal and dishonorable conduct as Prime Minister.[25] The court found that the slander was vicious in nature and awarded Lee S$250,000.[26]

Lee has also brought defamation suits against foreign publications. In 1990, the *Far Eastern Economic Review* was held liable for slander when it published an article that asserted Lee abused his office as Prime Minister by arresting sixteen church workers in connection with a clandestine communist network under the Internal Security Act.[27] Finding that there was express malice, the court awarded Lee S$250,000.[28]

More recently, in 2002, Lee brought a defamation suit against the U.S. business news wire *Bloomberg* for publishing an article that attributed to nepotism the appointment of Lee's daughter-in-law, Ho Ching, to executive director of a Government-owned investment company.[29] Interestingly, the article was not printed in Singapore, and Ho, who was arguably the person most defamed by the article, was not a party to the suit.[30] *Bloomberg* eventually settled the case for S$550,000.[31]

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22. *Id.*
23. Lee Kuan Yew v. Tang Liang Hong, [1997] 3 S.L.R. at 113.
24. *Id.*
25. *Id.* (citing Lee Kuan Yew v. Seow Khee Leng, [1989] 1 M.L.J. 172 (Sing.)).
26. *Id.* at 114.
27. *Id.* (citing Lee Kuan Yew v. Davis, [1990] 1 M.L.J. 390 (Sing.)).
28. *Id.*
29. Ellis, *supra* note 21, at B09.
30. *Id.*
31. *Id.*

In comparison to the above cases, the highest award for defamation thus far is the amount of S$600,000 that was given to Prime Minister Goh, who sued Tang Liang Hong, a member of the Workers' Party, for making defamatory statements in a telephone interview with the local newspaper.[32] Each of the ten other public official plaintiffs arising out of this case was also awarded damages, none below the hundred thousand dollar mark.[33] The court wanted to show its "indignation at the injury inflicted on the plaintiffs."[34]

III. BALANCING TWO COMPETING INTERESTS: THE RIGHT TO PROTECT THE REPUTATION OF PUBLIC OFFICIALS VIS-À-VIS THE INDIVIDUAL RIGHT TO FREE SPEECH

In a forum for public discourse, opposing parties with conflicting interests butt heads. On one side, the public official charges in the name of reputation; on the other side, the private individual charges in the name of free speech. It is the courts' duty as the referee to maintain a balance between these two competing interests. The fact that public officials have systematically brought defamation suits to silence political dissent, and have won virtually every suit, reveals that the Singapore judicial process has been abused and the right of free speech undermined.

A. Separation of Powers: Upholding the Integrity of the Judicial Process from Abuse by the Executive Branch

Singapore's Constitution embodies the principle of separation of powers, and although judicial review is not expressly provided for in the Constitution, it has been exercised and accepted in practice.[35] As stated earlier, Part IV of the Constitution protects fundamental liberties, including the guaranteed right of free speech under Article 14.[36] Thus, the Singapore judiciary is the best custodian of the fundamental right to free speech, especially if another branch of government infringes upon it.[37]

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32. Lee Kuan Yew v. Tang Liang Hong, [1997] 3 S.L.R. at 105, 109.

33. *Id.* (listing the schedule of damages awarded to each of the public official plaintiffs).

34. *Id.* at 118.

35. Thio Li-Ann I, *supra* note 10, at 343-44.

36. SING. CONST. art. 14.

37. *See* Thio Li-Ann, *An 'i' for an 'I'? Singapore's Communitarian Model of Constitutional Adjudication*, 27 H.K.L.J. 152, 153 (1997) [hereinafter Thio Li-Ann II].

The pattern of defamation suits brought by members of the executive branch amounts to such an infringement, and the Singapore courts' application of a strict liability standard have resulted in consistent rulings in favor of these public officials. Such rulings have encouraged public officials to silence political dissent and free speech to an alarming degree. This indicates that the strict liability standard applied by the Singapore courts unjustly favors protecting the reputations of public officials. Thus, to strike a better balance between the interests of protecting a public official's reputation and freedom of speech, the judiciary should reexamine the standard it currently applies to defamation cases involving public officials.

B. Determining the Natural and Ordinary Meaning of Words Under a Strict Liability Standard

Under Singapore's common law, defamation is a strict liability tort. The defendant's intent is irrelevant.[38] As the court in *Lee Kuan Yew v. Vinocur* stated, "[w]hen [defamatory words about] a person are published, the law presumes that the words are false and the burden of proving that they are true is placed on the defendant."[39]

The following three cases illustrate how Singapore courts have a tendency under the strict liability standard to accept only one defamatory meaning in the defendant's statements without considering other possible natural and ordinary meanings. Since the Singapore government eliminated all jury trials in Singapore since 1969,[40] the judge determines the nature of the statements made. The danger with this approach is the potential lack of objectivity when the judge alone tries to determine whether an ordinary person could perceive the defendant's statements to be defamatory, especially since judges in Singapore are appointed by the President[41] and the plaintiffs are members of the executive branch.

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38. Scott L. Goodroad, *The Challenge Of Free Speech: Asian Values v. Unfettered Free Speech, An Analysis Of Singapore and Malaysia in the New Global Order*, 9 IND. INT'L & COMP. L. REV. 259, 299 (1998).

39. Lee Kuan Yew v. Vinocur, [1996] 2 S.L.R. 542 (Sing.) (citing DUNCAN & NEILL ON DEFAMATION para. 17.02 (2nd ed.)).

40. David J. Thorpe, *Some Practical Points About Starting a Business in Singapore: "Give Me Liberty or Give Me Wealth,"* 27 CREIGHTON L. REV. 1039, 1052 (1994).

41. CIA, *supra* note 11, at 461.

1. Jeyaretnam v. Lee Kuan Yew

In 1986, then Prime Minister Lee instructed the Minister for National Development, Teh Cheang Wan (Teh), to take a leave of absence amidst an impending investigation against Teh for corruption.[42] Less than a month later, Teh was found dead from an overdose of amytal barbituate; the coroner declared that Teh had committed suicide.[43] A Commission of Inquiry was subsequently formed to investigate the allegations of corruption but not Teh's suicide.[44] The Commission found that no member of government, apart from Teh, was involved in the alleged corruption.[45]

This event formed the subject of a speech at an election rally in 1988, where the Secretary-General of the Workers' Party, J.B. Jeyaretnam, directed the following questions at Lee:[46]

> Why hasn't the government conducted any inquiry to find out how Mr. Teh Cheang Wan came by this poison [since it cannot, under the Drugs Act, be bought over the counter]? . . . Teh Cheang Wan wrote to the Prime Minister, I think a day before his death . . . [he] ended that letter by saying I am very sorry I will do as you advise. My question to our Prime Minister from here tonight is this. Did he respond to that letter from Mr. Teh Cheang Wan? And if he did respond what was his response?[47]

Following these statements, Lee brought an action against Jeyaretnam for uttering slanderous speech injurious to his character and reputation.[48] Ultimately, in *Jeyaretnam v. Lee Kuan Yew*, the Singapore Court of Appeal affirmed the lower court's judgment[49] that Jeyaretnam was liable for slander and awarded Lee damages of S$260,000.[50] The court stated:

> In determining the natural and ordinary meaning of the words complained of, the sense or meaning intended by the appellant uttering the words, or in which the respondent understood them, is irrelevant. Extrinsic evidence is not admissible in

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42. Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. 310, 314 (Ct. of Appeal).
43. *Id.*
44. *Id.*
45. *Id.* at 315.
46. *Id.*
47. *Id.* at 316.
48. *Id.*
49. *See* Lee Kuan Yew v. Jeyaretnam (No. 1), [1990] S.L.R. 688, 1990 SLR LEXIS 345 (Sing.).
50. Jeyaretnam v. Lee Kuan Yew, [1992] 2. S.L.R. at 318.

> construing the words. The meaning must be gathered from the words themselves and in the context of the entire speech made by the appellant on that occasion. It is the natural and ordinary meaning as understood by reasonable members of the audience using their general knowledge and common sense. It is not confined to a literal or strict meaning of the words, but includes any inferences or implications which could reasonably be drawn by such persons.[51]

Relying on this rule, the court held that because Jeyaretnam questioned the honesty of the government in an earlier part of his speech,[52] an ordinary listener could understand his subsequent questions to imply that the government attempted to cover up Teh's suicide to avoid further investigation of Lee's possible involvement.[53] How exactly the court determined this to be the natural and ordinary meaning of Jeyaretnam's statements is unclear. Granted, when Jeyaretnam remarked, "[I]t was essential for a government to tell the truth and nothing but the whole truth and not to hide anything,"[54] the ordinary listener would have inferred from Jeyaretnam's subsequent questions that the government had not been entirely honest or forthcoming about the circumstances surrounding Teh's death. The court, however, held that no inference was necessary, stating: "At that stage, it must have been obvious to the listener that the appellant was suggesting in clear terms, though in the form of questions, that there was a 'cover-up' by the government of Teh's suicide."[55]

The obviousness of such a conclusion is questionable at best. Dishonesty does not necessarily entail a government cover-up. The ordinary listener might have concluded that the government failed to conduct an inquiry on Teh's suicide for reasons other than a cover-up. The court did not consider whether Jeyaretnam's words were capable of any other meaning and seemed all too ready to accept what it thought to be the only natural and ordinary meaning of his statements.

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51. *Id.* at 318-19.

52. *Id.* at 315-16. (quoting Jeyaretnam in an earlier part of his speech, "I took up the Prime Minister's statement that was made on National Day, I think, that the government was an honest government and that the voters should vote for an honest government. And I asked a number of questions bringing out specific instances and asked whether the government was honest. . . .").

53. *Id.* at 321.

54. *Id.* at 316.

55. *Id.* at 322.

2. Goh Chok Tong v. Tang Liang Hong

On December 1996, various newspapers attributed to Prime Minister Goh a number of statements made during his election campaign about Tang Liang Hong, a member of the Workers' Party.[56] He allegedly called Tang a "Chinese chauvinist who held radical views on the promotion of the Chinese language and culture and that these views would undermine Singapore's racial peace."[57]

Subsequently, Tang spoke at various election rallies, discussing the issues that his party would raise to the Parliament.[58] He responded to Goh's remarks about him being a Chinese chauvinist:

> Goh Chok Tong has resorted to hitting below the belt. He said that I am anti-Christian and a Chinese chauvinist. [The PAP and Goh] keep on repeating that because they believe that if a lie is repeated a hundred times, a lie can become truth. . . .
>
> But they try to digress from the topic of election into trying to put me on trial before Singaporeans. The trial of my character is not the issue of this election.[59]

Goh's solicitors then sent Tang a letter, demanding a withdrawal of the defamatory statements and a public apology.[60] Tang did not comply with Goh's demands[61] and left Singapore a few days later.[62] While in Malaysia, Tang did an interview with Singapore's local newspaper, *The Straits Times*, and explained that he had fled the country for fear that he might be arrested:[63]

> [Tang said,] "They were building up this case against me. I could see where it was all heading. I wanted to leave Singapore and be given a chance to tell the world that I am not who they say I am.
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> "Once I go back to Singapore, there is a possibility that I may be locked up and not given a chance to defend myself," he said....

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56. Goh Chok Tong v. Tang Liang Hong, [1997] 2 S.L.R. 641, 641 (Sing).
57. *Id.* at 649.
58. *Id.* at 653.
59. *Id.* at 654.
60. *Id.*
61. *Id.* at 655.
62. *Id.* at 656.
63. *Id.* at 657.

> When told that Prime Minister Goh Chok Tong had given an assurance that he would not be arrested, he laughed, adding: "Do you think I should believe him?"
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> [Tang] said that many years ago, Senior Minister Lee Kuan Yew had given some Nanyang University students a similar assurance. A few days later, some of them were arrested.
>
> Mr. Tang, 61, said that he did not discount being arrested under the Internal Security Act, especially since he had been accused of playing "international" games.[64]

In response to the above statements published in the article, Goh brought a defamation suit against Tang. The Singapore High Court in *Goh Chok Tong v. Tang Liang Hong* ruled that Tang was liable for slander and awarded Goh damages.[65] The court stated:

> [T]he 'natural and ordinary meaning' to be ascribed to the publication is the meaning, including any inferential meanings, which the publication read or heard in its entirety and in its context would convey to the ordinary, reasonable, fair-minded reader or listener... [A]lthough the alleged libelous publication or the alleged slanderous words may convey different meanings to different readers or listeners, a judge in Singapore, as a finder of facts, is required by the common law to determine the single and the right meaning which the publication or words conveyed to the notional reasonable reader or reasonable listener and, having identified it, the judge is then to proceed to consider if it is defamatory of the plaintiff.[66]

Based on this rule, the court interpreted Tang's explanation of why he had fled the country as conveying to an ordinary reader that Goh was "not an honest man, not a man of integrity and could not be trusted"[67] and that he "most probably would corruptly and illegally use his power and influence as the Prime Minister of Singapore to arrest the defendant under the Internal Security Act."[68] It is unclear exactly how the court determined this to be "the single and the right meaning" of Tang's statements. Assuming

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64. Brendan Pereira, *I fled as I feared being arrested: Tang*, THE STRAITS TIMES, Jan. 11, 1997, at 31.

65. Goh Chok Tong v. Tang Liang Hong, [1997] 2 S.L.R. at 667.

66. *Id.* at 659.

67. *Id.* at 661.

68. *Id.*

that Tang's statement, "I am not who they say I am," implies to the ordinary reader that Goh was "not an honest man, not a man of integrity," nevertheless, the judge provided little reasoning for his conclusion that, "In my judgment what I have set out is the single and the right meaning of the utterances in the article."[69]

The judge's interpretation, however, may not be "the single and the right meaning." When Tang mentioned the Internal Security Act (ISA), he was referring to Senior Minister Lee's past actions.[70] Even if Goh were to invoke the ISA, the ordinary reader might not necessarily conclude that he would corruptly and illegally use his power to do so. Here, the court did not consider whether Tang's words were capable of any other meaning, and seemed all too ready to accept the damning definition offered by Goh.

3. Lee Kuan Yew v. Chee Soon Juan

At an election rally in 2001, Chee Soon Juan, the Secretary-General of the Singapore Democratic Party, raised questions about the government's financial assistance to Indonesia in 1998.[71] He told the public:

> [W]hen we met Goh Chok Tong . . . I asked him, "Mr Goh, what happened to our money? What happened to this $17 billion?" He wouldn't answer. . . . My friends, it is your money ... not the Government's money . . . And this is that same question that I want to ask Mr. Lee Kuan Yew today. . . . So Mr. Lee Kuan Yew, I challenge you, tell us about this $17 billion you loaned to Suharto.[72]

In response to the above statements, Lee brought a defamation suit against Chee. On August 19, 2002, at a closed hearing in private chambers, a senior judicial officer not only entered summary judgment,[73] but also denied Chee's request for foreign lawyers (Queen Counsels Stuart Littlemore,[74] William

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69. *Id.*

70. *Id.* at 658.

71. *See* Lee Kuan Yew v. Chee Soon Juan, [2003] 3 S.L.R. 8, at *11 (Sing.) (LEXIS, Singapore Law Reports).

72. *Id.*

73. Lawyers Committee for Human Rights, Trial Observation Report: The Defamation Appeal of Dr. Chee Soon Juan 1 (2003), http://www.lchr.org/workers_rights/wr_se_asia/wr_singapore/wr_chee/trial_observation_report_2003.pdf.

74. *See Re* Littlemore, [2002] 1 S.L.R. 296, 297.

Nicholas, and Martin Lee[75]), leaving Chee to act as a pro se litigant. On April 4, 2003, the High Court in *Lee Kuan Yew v. Chee Soon Juan* denied Chee's appeal.[76] The court stated:

> The test as to what is the natural and ordinary meaning of the Words has been set out in *Rubber Improvement Ltd & Anor v. Daily Telegraph Ltd* where Lord Reid said . . . : "There is no doubt that in actions for libel the question is what the words would convey to the ordinary man . . . so he can and does read between the lines in the light of his general knowledge and experience of world affairs. What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. . . . [S]ometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning."[77]

Relying on this test, the court concluded that Chee's statements imputed dishonesty against Lee, that Lee "concealed the fact of the loan from Parliament and/or the public, and/or deliberately misled Parliament and/or the public in relation to the loan."[78] It is unclear how the court determined this to be the natural and ordinary meaning of Chee's statements. Granted, when Chee challenged Lee to account for the loan, the ordinary listener could have inferred Chee's imputation of dishonesty against Lee.[79] Lee's failure to address the issue of the loan, however, did not necessarily imply, as the court suggested, that Lee had "something discreditable to hide."[80] The ordinary listener could also conclude that Lee had legitimate reasons for not responding to Chee's challenge. In other words, the court did not consider whether Chee's words were capable of any other

75. *See Re* Nicholas, [2002] 2 S.L.R. 296, 307.
76. Lee Kuan Yew v. Chee Soon Juan, [2003] 3 S.L.R. at *31.
77. *Id.* at *27.
78. *Id.* at *28.
79. *Id.*
80. *Id.*

meaning, and was all too ready to accept Lee's interpretation of Chee's statements.

C. Adopting the Public Official Exception in Place of the Strict Liability Standard

Jeyaretnam, Tang, and *Chee* suggest that, under a strict liability standard, the courts tend to accept, perhaps too readily, the plaintiff's interpretation of the defendant's allegedly defamatory statements. Under a no-jury trial system, this is not a fair and objective approach to determine the natural and ordinary meaning of words. As this section will explain, the defenses currently available do not adequately protect the right to free speech in cases where the plaintiff is a public official. To minimize the chilling effect that defamation laws have on free speech, Singapore courts should adopt the public official exception which shifts the burden of proof from the defendant to the plaintiff.

1. Tipping the Scales in Favor of Protecting a Public Official's Reputation at the Expense of Free Expression

When a public official in Singapore initiates a defamation suit, safeguards for the defendant's right to free speech are limited in the following ways. First, as already demonstrated, President-appointed judges applying a strict liability standard in a no-jury trial system brings into question the courts' objectivity in determining the natural and ordinary meaning of the defendant's statements.[81] Second, under Singapore's Defamation Act, Article 14 specifically precludes qualified privilege as a defense for persons make defamatory statements material to a question at issue in the election.[82] Third, a person in an undischarged bankruptcy or charged with a fine of more than S$2,000 is automatically disqualified from membership in Parliament.[83] As a result, political opponents are barred from formal political activity due to such fines and large damages awarded in defamation cases involving public officials.

Thus, with the scales tipped in favor of protecting public reputation, the Singapore courts in *Jeyaretnam, Tang, Chee, Lee Kuan Yew v. Seow Khee Leng, Lee Kuan Yew v. Davis,* among

81. *Supra* Part III(B).
82. Defamation Act, 1985, c. 75, § 14 (Sing.).
83. SING. CONST. art. 45.

others, have consistently ruled in favor of public officials.[84] In fact, the local newspaper, *The Straits Times*, reported that Singapore courts "have tended to accept the argument that, because politicians are well-regarded here, they deserve higher damages to protect and vindicate their reputations."[85] Admittedly, the courts' justification for this position is that the public has an interest in the "maintenance of public character."[86] To hold otherwise would "deter sensitive and honorable men from seeking public positions."[87] In addition, the court reasoned, "Persons holding public office . . . are equally entitled to have their reputations protected as those of any other persons."[88]

Public officials and private individuals, however, should not receive the same degree of protection for their reputation. Not only do public officials have easy access to the mass media, which provides them with a greater opportunity to be heard, but also, by virtue of their status, they necessarily expose themselves to public criticism.[89] Moreover, the public officials in Singapore who have pursued defamation suits against political opponents belong to the ruling People's Action Party, which has held almost all of the seats in Parliament ever since the country declared independence in 1965.[90] Thus, with the limited safeguards for free expression, political opponents, such as Jeyaretnam, Tang, and Chee, are effectively deprived of any ability to voice their criticism.

2. The Public Official Exception and the Constitutional Grounds for Its Rejection in Singapore

In light of this imbalance between the right of protecting a public official's reputation and the right to free speech, Singapore courts need to assess whether strict liability is the appropriate

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84. *See* Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. 310; Goh Chok Tong v. Tang Liang Hong, [1997] 2 S.L.R. 641; Lee Kuan Yew v. Chee Soon Juan, [2003] 3 S.L.R. 8; Lee Kuan Yew v. Jeyaretnam, [1979] 1 M.L.J. 281 (Sing.); Lee Kuan Yew v. Seow Khee Leng, [1989] 1 M.L.J 172; Lee Kuan Yew v. Davis, [1990] 1 M.L.J. 390.

85. Chua Mui Hoong, *Is Singapore's Legal System Getting a Bad Name?*, THE STRAITS TIMES, Oct. 25, 1997, at 66.

86. Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. at 333.

87. *Id.* (quoting GATLEY ON LIBEL AND SLANDER 206 n.65 (8th ed.)).

88. *Id.* at 332.

89. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 344-45 (1974) (distinguishing between private individuals and public figures under the *Sullivan* standard for public figures).

90. CIA, *supra* note 11; BBC News, *supra* note 19.

standard to apply in defamation cases involving public officials. A look at how courts in other common law jurisdictions appropriate the burden of proof might serve as persuasive authority for Singapore courts.

In the United States, an exception has been created in which the burden of proving truth no longer lies with the defendant when the plaintiff is a public official. *New York Times v. Sullivan*[91] eradicated the strict liability standard[92] and established that when the defendant utters defamatory statements in relation to public officials and their official conduct, the plaintiff must prove the defendant made the false statements with actual malice, that is, with knowledge or reckless indifference to the falsehood.[93] Finding that the common law presumption of falsity had a chilling effect on the First Amendment right to free speech,[94] the U.S. Supreme Court arrived at this standard of actual malice based on the "principle that debate on public issues should be uninhibited, robust, and wide-open."[95]

The defense counsel in *Jeyaretnam* raised the *Sullivan* public official exception, arguing that Jeyaretnam's speech addressed Prime Minister Lee's official conduct surrounding Minister Teh's suicide and thus the actual malice standard should instead be applied.[96] The court refused to follow *Sullivan*, however, on the ground that, while the First and Fourteenth Amendments of the U.S. Constitution prohibit the federal and state governments from enacting laws that abridge free speech, the second clause of Article 14 of the Singapore Constitution expressly allows Parliament to restrict the right of free speech and expression guaranteed by the first clause of the same article.[97] In line with these provisions, the court concluded that the right of free speech and expression is thereby not absolute[98] and legislative restrictions, such as the Defamation Act, are not inconsistent with Article 14 of the Singapore Constitution.[99] Based on this difference between the

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91. 376 U.S. 254 (1964).

92. David M. Cohn, *The Problem of Indirect Defamation: Omission of Material Facts, Implication, and Innuendo*, 1993 U. CHI. LEGAL F. 233, 237 (1993).

93. *Sullivan*, 376 U.S. at 279-80.

94. *Id.* at 300.

95. *Id.* at 270.

96. Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. at 326, 327.

97. *Id.* at 330 (citing U.S. CONST. amends. I, XIV and SING. CONST. art 14).

98. *Id.* at 332.

99. *Id.* at 331.

Constitution of the United States and that of Singapore, the court rejected the public official exception and held that public officials should not be treated differently from private individuals with respect to the level of acceptable criticism.[100]

3. Emerging Trend of Common Law Jurisdictions Adopting the Fundamental Free Speech Principles Underlying the Public Official Exception

Although, Singapore's common law standards for defamation differ from those of the United States,[101] Singapore courts should not turn a blind eye to the public official exception, because there is an emerging trend of common law jurisdictions adopting the fundamental free speech principles underlying the public official exception.[102] The following Commonwealth cases illustrate how Australian and British courts have engaged in a comparative analysis of *Sullivan* when free speech protection needed expansion.

Several Australian cases show *Sullivan*'s influence on the courts.[103] For example, in *Theophanous v. Herald and Weekly Times Ltd.*, the Australian High Court found in favor of the defendant, who had published a letter questioning the plaintiff's fitness to hold office as a Member of Parliament.[104] The court reasoned that, although *Sullivan* referred to the U.S. Constitution's First Amendment free speech guarantee, the U.S. approach was not entirely irrelevant in Australia.[105] The court argued that Australia's common law of defamation provided defenses, such as fair comment and privilege, to balance the public's free speech interest with protecting one's reputation.[106] There is still no guarantee, however, that these defamation defenses adequately protect against chilling free speech.[107]

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100. *Id.* at 332-33.

101. *See* Marlene A. Nicholson, *McLibel: A Case Study In English Defamation Law*, 18 WIS. INT'L L.J. 1, 35 (2000) (compares U.S. defamation law, which is no longer a strict liability action, with English defamation law, which is similar to that of Singapore).

102. *See* Gehan N. Gunaskekara, *Judicial Reasoning by Analogy with Statutes: Now an Accepted Technique in New Zealand?*, 19 STATUTE L. REV. 177, 181 (1998).

103. *Id.*

104. Theophanous v. Herald and Weekly Times Ltd., (1993-1994) 182 C.L.R. 104, 117-18 (Austl.).

105. *Id.* at 130.

106. *Id.* at 131.

107. *Id.* at 131-32.

Despite agreeing with *Sullivan*, the court did not adopt the actual malice test. Instead, it provided that the defendant could have a complete defense if the defendant can demonstrate that "(a) it was unaware of the falsity of the material published; (b) it did not publish the material recklessly, that is, not caring whether the material was true or false; and (c) the publication was reasonable in the circumstances."[108] The court adopted this test to better suit Australian values. Nonetheless, the court drew heavily from *Sullivan*. Just as the *Sullivan* test requires the plaintiff to demonstrate the defendant's knowledge of falsity,[109] the *Theophanous* test requires the defendant to demonstrate lack of knowledge in the falsity of the statements concerning public officials.[110]

Courts in Britain have also been influenced by the *Sullivan* decision. In *Derbyshire County Council v. Times Newspapers Ltd.*, the court found in favor of the defendant, who had published articles questioning the propriety of certain investments made by the plaintiffs (members of the Derbyshire County Council).[111] The court reasoned that while *Sullivan* referred to the U.S. Constitution's First Amendment on free speech, the underlying public interest considerations apply equally in Britain.[112] In particular, the court argued, "It is of the highest public importance that a democratically elected governmental body . . . should be open to uninhibited public criticism."[113] Like the court in *Theophanous*, the court in *Derbyshire* was especially wary of how defamation laws could chill free speech, noting that these laws amount to "political censorship of the most insidious and objectionable kind."[114]

Thus, as demonstrated in *Derbyshire* and *Theophanous*, common law jurisdictions like Britain and Australia agree with *Sullivan's* underlying free speech principles. Both courts recognize

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108. *Id.* at 141.

109. *Sullivan*, 376 U.S. at 280.

110. *Theophanous*, (1993-1994) 182 C.L.R. at 141.

111. *See* Derbyshire County Council v. Times Newspapers Ltd., [1993] 1 All. E.R. 1011, 1101 (Eng. H.L. 1993).

112. *Id.* at 1018.

113. *Id.* at 1017.

114. *Id.* at 1018 (quoting Lord Bridge in Hector v. A-G of Antigua and Barbuda, [1990] 2 All E.R. 103, 106 (Eng. P.C. 1990)).

that in cases where the plaintiff is a public official and the burden of proof is on the defendant, defamation laws can chill free speech.

4. Leveling the Playing Field: Justifications for Adopting the Public Official Exception

In view of the emerging trend of common law jurisdictions adopting the free speech principles underlying the public official exception, there are many reasons why Singapore courts should follow suit. First, as Singapore courts have often referred to decisions from other common law jurisdictions to establish their own common law,[115] they could similarly look to *Derbyshire* and *Theophanous* as persuasive authority to adopt *Sullivan's* underlying free speech principles.

Moreover, due to Singapore's colonial history, Singapore's common law of defamation closely resembles that of Britain. Both jurisdictions favor protecting the plaintiff's reputation,[116] both place the burden of proving truth on the defendant,[117] both do not distinguish between public or private individuals,[118] and both refer to their respective Defamation Acts.[119] Given these similarities, *Derbyshire* should be applicable in Singapore.

One significant difference, however, is that Britain does not have a written constitution protecting free speech, while both the U.S. Constitution and the Singapore Constitution expressly guarantee the right to free speech.[120] This difference, however, did not prevent the court in *Derbyshire* from adopting the free speech principles underlying *Sullivan*.[121] Thus, in *Jeyaretnam*, the court's refusal to follow the *Sullivan* decision because of the difference between Singapore's Constitution and that of the United States is unjustified in light of *Derbyshire*.

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115. *E.g.*, Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. at 320-21 (citing Sim v. Stretch, [1936] 2 All E.R. 1237, 1240 (Eng. H.L. 1936)).

116. Gregory T. Walters, *Bachchan v. India Abroad Publications Inc.: The Clash Between Protection of Free Speech in the United States and Great Britain*, 16 FORDHAM INT'L L.J. 895, 931 (1993).

117. *Id.* at 909.

118. *Id.*

119. *Id.*

120. *Compare* Walters, *supra* note 116, at 908 *with* SING. CONST. art. 14; *see* Douglas W. Vick, *The Human Rights Act and the British Constitution*, 37 TEX. INT'L L.J. 329, 331-32 (2002).

121. *See Derbyshire*, [1993] 1 All E.R. at 1018.

Second, in *Theophanous* and *Derbyshire*, the courts emphasized the importance of protecting the right to free speech in a democratic society, especially when criticizing public officials. As Lord Bridge aptly stated, "In a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism."[122] Given that *Jeyaretnam*, *Tang*, and *Chee* are similar to *Theophanous* and *Derbyshire* (they all involve defamation suits brought by public officials against private individuals),[123] Lord Bridge's point should be equally applicable in Singapore. By adopting the public official exception, the Singapore courts would ensure the free exchange of ideas in the political arena.

Third, because defamation laws can chill free speech,[124] Singapore courts should heed the *Theophanous* court's advice, that is, to minimize the chilling effect on free speech by shifting the burden of proving malice to the plaintiff.[125] This shift in the burden of proof is particularly apt in Singapore, since political opponents, such as Jeyaretnam, Tang and Chee, are at an unfair disadvantage relative to public officials for the reasons already given.[126]

Fourth, if Singapore's common law of defamation tips the balance in favor of protecting a public official's reputation, some commentators argue that applying the public official exception would tip the balance too far in favor of free speech,[127] and so, expanding qualified privilege would, at best, achieve a middle ground. This approach may work in Commonwealth countries such as England and Australia, where qualified privilege is available as a defense. In Singapore, however, Article 14 of the Defamation Act precludes qualified privilege specifically in situations when defamatory statements are material to an

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122. *See id.* (quoting Lord Bridge in *Hector*, [1990] 2 All E.R. at 106); *Theophanous*, (1993-1994) 182 C.L.R. at 130 ("[The] implication of freedom of communication, the purpose of which is to ensure the efficacy of representative democracy, must extend to protect political discussion from exposure to onerous criminal and civil liability....").

123. *Compare* Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. 310, Goh Chok Tong v. Tang Liang Hong, [1997] 2 S.L.R. 641, and *Chee Soon Juan*, 3 S.L.R. 8, *with Theophanous*, (1993-1994) 182 C.L.R. 104, and *Derbyshire*, [1993] 1 All E.R. 101.

124. *See Theophanous*, (1993-1994) 182 C.L.R. at 132.

125. *Id.* at 185.

126. *Supra* Part III.

127. Susanna Frederick Fischer, *Rethinking Sullivan: New Approaches in Australia, New Zealand, and England*, 34 GEO. WASH. INT'L L. REV. 101, 185 (2002).

election.[128] For example, in *Jeyaretnam*, the court rejected Jeyaretnam's defense of qualified privilege,[129] stating that "the right of free speech under art[icle] 14 is subject to the common law of defamation as modified by the Defamation Act,"[130] and "Parliament has thus legislated that the circumstances of a general election are not sufficient to give rise to an occasion of privilege."[131]

With this legislative provision in place to protect the reputation of public officials, the courts have a duty in the name of judicial review to serve as a check on the executive branch and prevent PAP members from muzzling political opponents, such as Jeyaretnam, Tang, and Chee, who participate in election rallies and engage in political debate. Thus, adopting the public official exception in Singapore would not be an extreme measure, since it would serve to offset the absence of qualified privilege as a defense in defamation cases involving public officials.

Fifth, certain Australian states have rejected the public official exception because litigation by public figures has not significantly decreased in the United States since the *Sullivan* decision.[132] A recent study reveals, however, that the rate of defamation suits filed in the Sydney Supreme Court is at least eighty times greater than that filed in U.S. courts.[133] The study also reveals that there is a greater proportion of public officials as defamation plaintiffs in Australia than in the United States.[134] If accurate, these findings would support the assertion that requiring plaintiffs to prove malice would discourage public officials from bringing defamation suits.

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128. Defamation Act, 1985, c. 75, § 14 (Sing.).

129. Jeyaretnam v. Lee Kuan Yew, [1992] 2 S.L.R. at 337.

130. *Id.* at 331.

131. *Id.* at 336.

132. Michael Newcity, *The Sociology of Defamation in Australia and the United States*, 26 TEX. INT'L L.J. 1, 5 (quoting ATTORNEYS-GENERAL OF QUEENSLAND, NEW SOUTH WALES AND VICTORIA, DISCUSSION PAPER (NO. 2), REFORM OF DEFAMATION LAWS (1990)).

133. *Id.* at 64.

134. *Id.* at 19.

5. Staying Within the Four Corners of Singapore's Constitution and Adapting to Changing Local Conditions

By refusing to accept the public official exception based on the difference between the U.S. Constitution and the Singapore Constitution, the court in *Jeyaretnam* took the approach adopted in *State of Kelantan v. Government of the Federation of Malaya.* That is, the *Jeyaretnam* court opted to interpret Singapore's Constitution within its four corners.[135] This approach prohibits the court from using foreign cases to develop jurisprudence within the limits of the Singapore Constitution, and to establish an autochthonous legal system according to the country's local conditions.[136]

One of these conditions is cultural values, or "Asian values," as popularized by Singapore's former Prime Minister, Lee Kuan Yew.[137] Human rights, as defined by Asian values, are not universal but ethnocentric.[138] In contrast to Western ideals of democracy, Asian values advance community interests over individual interests. This is known as communitarianism.[139] To further the interest of the community, the government and the people enter into a social contract whereby civil and political liberties are sacrificed for the sake of economic efficiency and stability, much like the contract between the Leviathan and its subjects, as espoused by Thomas Hobbes.

This contract is what drives Singapore's economic engine. In fact, the great extent to which the government has taken on the responsibility of maintaining social order and public welfare has earned the nation the sobriquet of "the nanny state."[140] For

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135. Gov't of the State of Kelantan v. Gov't of the Fed'n of Malaya, [1963] 29 M.L.J. 355, 358 (1963).

136. *E.g.*, Attorney Gen. v. Wain, [1991] 2 M.L.J. 525, 531 (Sing.) (In determining the issue of whether there was contempt of court, the judge emphasized the importance of taking into consideration the country's local conditions, namely, the fact that there are no jury trials in Singapore.)

137. South Asia Human Rights Documentation Centre, *Singapore: Asia's Gilded Cage, at* http://www.hrdc.net/sahrdc/hrfeatures/HRF55.htm (last visited Apr. 22, 2004).

138. Jack Donnelly, *Human Rights and Asian Values: A Defense of "Western Universalism," in* THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS 60, 80, 83 (Joanne R. Bauer & Daniel A. Bell eds., 1999) (comparing Asian and Western political ideals and practices and discusses the universal treatment of human rights).

139. *See* BENG-HUAT CHUA, COMMUNITARIAN IDEOLOGY AND DEMOCRACY IN SINGAPORE 210 (1995).

140. Bernice Han, *Singapore's Free Speech Site Turns Three to Little Fanfare Amid Slump*, AGENCE FRANCE PRESSE, Sept. 1, 2003, LEXIS, Agence France Presse File.

example, in 2000, the government designated a park space, known as Speakers' Corner, to serve as a platform for people to speak their mind, albeit not without restrictions.[141] Speakers cannot use any sound amplification devices, must be citizens, register for a police permit, and refrain from comments that are libelous, touch on religion, or offend the law.[142]

This concept of communitarianism is based on the assumption that maintaining stability in the community necessarily precludes the full enjoyment of human rights. True, political speech can incite social unrest, but what about good faith political criticism? Is there evidence to show that a blanket restriction on political dissent will guarantee stability? In fact, suppressing dissent may only fuel hatred towards the government, which would eventually lead to instability. To say that the Western model of democracy would not be appropriate in the Asian society does not hold true in light of recent events in Asia. A prime example is the march that took place in Hong Kong on July 1, 2003, when 500,000 people demonstrated peaceably against the government's proposed anti-subversion legislation.[143] Instead of causing social disorder, the march resulted in positive change, namely the postponement and reconsideration of the government's proposed anti-subversion legislation, which if passed, could have potentially abridged the right to free speech. Thus, even under the Asian values argument, it is unnecessary to trade off civil and political rights for economic stability.

The concept of communitarianism is also based on the assumption that the community can be treated as separate from the individual. The community's interest is by definition the sum of individual interests, however. If the community is treated as a separate entity, how does one determine what the community's interests are when individual interests have no significance in a communitarian society? Compounding this dilemma is the fact that a racially diverse community, such as Singapore, cannot be said to hold common cultural values. In other words, the term Asian values itself is ambiguous. Which cultural values in

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141. Conor O'Clery, *Speakers' Corner that Puts a Limit on the Message*, IRISH TIMES, Sept. 4, 2000, at 13; Seth Mydans, *'Tom, Dick and Harry' of Singapore Tasting Freedom of Speakers' Corner*, CHI. TRIBUNE, Sept. 3, 2000, at C18.

142. O'Clery, *supra* note 141, at 13; Mydans, *supra* note 141, at C18.

143. *HK to Secure Broad Public Support Before Restarting Security Bill Legislation*, AFX NEWS ASIA, Sept. 18, 2003, LEXIS, AFX-Asia File.

particular does it refer to, especially when there is a myriad of cultures in Asia?

Nevertheless, even if communitarianism continues to have a stronghold in Singapore, Asian values are not static; they evolve according to changing local conditions. The country's Former Prime Minister Lee recently admitted, "[T]he old system, the old paradigm is no longer valid under these new circumstances, and that we have to change."[144] In agreement, Prime Minister Goh recently stated, "The next few years, I would think, we should be able to continue on the path of being more open, and getting people to be more participative in the affairs of the state."[145]

Establishing the Speakers' Corner can be seen as a first step in the government's willingness to tolerate a greater degree of free speech in this nanny state. In fact, the Speakers' Corner was instituted partially as a response to Chee's arrest after he made a speech at a public locale without a permit.[146] If more individuals were to voice their dissent, as did the 500,000 strong in Hong Kong, imagine the positive change that could result in Singapore. Thus, if local conditions set the standard by which the court constructs the four corners of the Singapore Constitution, then the court must recognize that room for political dissent has expanded, even if by a little. As Singapore's society has changed and developed, public interest calls for Singapore courts to adjust accordingly the standard it applies in defamation cases involving public officials.

IV. CONCLUSION

There is little room for the free flow of ideas and opinions if political players silence each other with defamation suits. Public officials in Singapore have persistently and successfully used this legal tactic to stifle political dissent, and this has amounted to an abuse of judicial responsibility. To restore the requisite balance between protecting a public official's reputation and the right to free speech, Singapore courts should adopt the public official

144. Zuraidah Ibrahim, *SM: I'll Be in Govt as Long as I'm Able*, STRAITS TIMES, Sept. 14, 2003, *available at* http://app.sgnews.gov.sg/data/Interviews/20030914.htm.

145. Press Release, Singapore Government, Transcript of Prime Minister Goh Chok Tong's Interview with Ms. Lorraine Hahn of CNN Programme "Talkasia," (Jan. 24, 2004), *available at* http://app.sprinter.gov.sg/data/pr/2004012402.htm (last visited Apr. 22, 2003).

146. O'Clery, *supra* note 141, at 13.

exception and place the burden of proving malice on public officials.

If the judiciary continues to allow public officials to use court proceedings as a forum to weed out political dissenters, individuals who fall prey to their defamation suits will be without recourse to exercise their fundamental right to free speech as guaranteed by the Singapore Constitution. At the moment, they lack adequate international fora in which to protect this right: Singapore has not accepted compulsory jurisdiction of the International Court of Justice; it is not a signatory to the International Covenant on Civil and Political Rights,[147] and Asia has yet to establish a regional human rights system comparable to that of Europe, America, and Africa.

The nanny state's stranglehold over free expression not only affects its own citizens, but could also potentially affect others beyond the shores of this island republic. Singapore's reproachable practice of public officials misusing defamation laws might set an example for other countries in the region to follow. Thus, it is vital that Singapore courts create proper safeguards for free expression and break Singapore's regrettable tradition of chilling free speech with defamation laws.

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147. Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principle International Human Rights Treaties as of 02 November 2003, available at* http://www.unhchr.ch/pdf/report.pdf (last visited Apr. 22, 2004).

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